

07/01/88



**UNITED STATES DEPARTMENT OF COMMERCE  
Patent and Trademark Office**

Address: COMMISSIONER OF PATENTS AND TRADEMARKS  
Washington, D.C. 20231

SERIAL NUMBER 0770114585	FILING DATE 02/06/87	FIRST NAMED APPLICANT OISHI	ATTORNEY DOCKET NO. S
-----------------------------	-------------------------	--------------------------------	--------------------------

JAMES E. NILLES  
FIRST WISCONSIN AVE.  
SUITE 3070  
777 EAST WISCONSIN AVE.  
MILWAUKEE, WI 53202

EXAMINER HARRIS, C	
ART UNIT 331	PAPER NUMBER 8

DATE MAILED: 04/13/88

This is a communication from the examiner in charge of your application.  
COMMISSIONER OF PATENTS AND TRADEMARKS

- ☐ This application has been examined ☒ Responsive to communication filed on Dec 16, 1987 ☒ This action is made final.

A shortened statutory period for response to this action is set to expire 3 month(s), 9 days from the date of this letter.  
Failure to respond within the period for response will cause the application to become abandoned. 35 U.S.C. 133

**Part I THE FOLLOWING ATTACHMENT(S) ARE PART OF THIS ACTION:**

- |  |   |
|--|---|
| 1. <input type="checkbox"/> Notice of References Cited by Examiner, PTO-892.       | 2. <input type="checkbox"/> Notice re Patent Drawing, PTO-948.                  |
| 3. <input type="checkbox"/> Notice of Art Cited by Applicant, PTO-1449             | 4. <input type="checkbox"/> Notice of informal Patent Application, Form PTO-152 |
| 5. <input type="checkbox"/> Information on How to Effect Drawing Changes, PTO-1474 | 6. <input type="checkbox"/> _____   |

**Part II SUMMARY OF ACTION**

1. ☒ Claims 1-5 are pending in the application.  
Of the above, claims 1-4 are withdrawn from consideration.
2. ☐ Claims \_\_\_\_\_ have been cancelled.
3. ☐ Claims \_\_\_\_\_ are allowed.
4. ☒ Claims 5 15 are rejected.
5. ☐ Claims \_\_\_\_\_ are objected to.
6. ☐ Claims \_\_\_\_\_ are subject to restriction or election requirement.
7. ☐ This application has been filed with informal drawings which are acceptable for examination purposes until such time as allowable subject matter is indicated.
8. ☐ Allowable subject matter having been indicated, formal drawings are required in response to this Office action.
9. ☐ The corrected or substitute drawings have been received on \_\_\_\_\_. These drawings are ☐ acceptable; ☐ not acceptable (see explanation).
10. ☐ The ☐ proposed drawing correction and/or the ☐ proposed additional or substitute sheet(s) of drawings, filed on \_\_\_\_\_ has (have) been ☐ approved by the examiner. ☐ disapproved by the examiner (see explanation).
11. ☐ The proposed drawing correction, filed \_\_\_\_\_, has been ☐ approved. ☐ disapproved (see explanation). However, the Patent and Trademark Office no longer makes drawing changes. It is now applicant's responsibility to ensure that the drawings are corrected. Corrections MUST be effected in accordance with the instructions set forth on the attached letter "INFORMATION ON HOW TO EFFECT DRAWING CHANGES", PTO-1474.
12. ☐ Acknowledgment is made of the claim for priority under 35 U.S.C. 119. The certified copy has ☐ been received ☐ not been received  
☐ been filed in parent application, serial no. \_\_\_\_\_; filed on \_\_\_\_\_.
13. ☐ Since this application appears to be in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under Ex parte Quayle, 1935 C.D. 11; 453 O.G. 213.
14. ☐ Other

Art Unit 331

The Examiner takes official notice that Applicant's response states that a copy of Japanese Patent Laid-Open No. 103689/1984 was enclosed, yet the copy was not received.

Applicant is requested to submit a model of the invention to enhance the Examiner's understanding of the invention.

The title of the invention is not descriptive. A new title is required that is clearly indicative of the invention to which the claims are directed.

The following is a quotation of the first paragraph of 35 U.S.C. 112:

The specification shall contain a written description of the invention, and of the manner and process of making and using it, in such full, clear, concise, and exact terms as to enable any person skilled in the art to which it pertains, or with which it is most nearly connected, to make and use the same and shall set forth the best mode contemplated by the inventor of carrying out his invention.

The specification is objected to under 35 U.S.C. 112, first paragraph, as failing to provide an adequate written description of the invention.

On page 10 in lines 12-13 it is unclear whether "linking gear 46" is fixedly attached to "crankshaft 45." In lines 14-15 it is unclear whether "second interlinking gear 47" is rotatably connected to "crankshaft 45" by what appears in Figure 5 to be an unreferenced bearing. On page 11 in lines 7-8 it is unclear

Art Unit 331

whether "relay gear 51" is fixedly attached to "crankshaft 50". It is unclear whether "relay gear 52" is rotatably mounted to "crankshaft 50" by means of a bearing which is neither numbered in the drawings nor referred to in the specification.

The drawings are objected to under 37 CFR 1.83(a). The drawings must show every feature of the invention specified in the claims. Therefore, the means to provide the alternate functioning of the crankshafts must be numbered and must be shown or the feature should be cancelled from the claim. No new matter should be entered.

Claim 5 is rejected under 35 U.S.C. 112, first paragraph, for the reasons set forth in the above objection to the specification.

It is unclear how one or two of the crankshafts can rotate without the other two or one crankshafts rotating also.

Claim 5 is rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.

Claim 5 is indefinite because the recitation of "either...or" appears to refer to two different embodiments of the invention.

Art Unit 331

The following is a quotation of 35 U.S.C. 103 which forms the basis for all obviousness rejections set forth in this Office action:

A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negatived by the manner in which the invention was made.

Subject matter developed by another person, which qualifies as prior art only under subsection (f) and (g) of section 102 of this title, shall not preclude patentability under this section where the subject matter and the claimed invention were, at the time the invention was made, owned by the same person or subject to an obligation of assignment to the same person.

Claim 5 as understood is rejected under 35 U.S.C. 103 as being unpatentable over Iwaya in view of Tomaro and Colwell.

Iwaya in Figs. 1 and 3 discloses a toy body in the form of a dog with movable leg frames moved by a first crankshaft between elements 43 and 51. A second crankshaft 27 opens the mouth 34 and powers the sounding member 30 and 31. Tomaro in Fig. 4 teaches the use of a control unit 20, microphone 21, sound-producing bellows 25 and an operating piece 29 which actuates the bellows.

Colwell in Fig. 5 teaches the use of two crankshafts 20 and 20' to power the four appendages of

Art Unit 331

the horse. It would have been obvious at the time the invention was made to a person having ordinary skill in the art to substitute a third crankshaft as taught by Colwell for the connecting rods 54 of Iwaya as a choice of design. It would have been further obvious to add the sound-actuated apparatus as taught by Tomaro to the toy of Iwaya as modified to produce an intermittent motion toy which amuses the user.

Applicant's arguments filed on December 16, 1987 have been fully considered but they are not deemed to be persuasive.

Applicant's argument on page 12 that the Colwell reference does not have arms is not well-taken. Depending on the animal represented there will be four appendages, either two arms and two legs or four legs. The appendages are functionally equivalent.

THIS ACTION IS MADE FINAL. Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a). The practice of automatically extending the shortened statutory period an additional month upon the filing of a timely first response to a final rejection has been discontinued by the Office. See 1021 TMOG 35.

A SHORTENED STATUTORY PERIOD FOR RESPONSE TO THIS FINAL ACTION IS SET TO EXPIRE **THREE MONTHS** FROM THE DATE OF THIS ACTION. IN THE EVENT A FIRST RESPONSE IS FILED WITHIN TWO MONTHS OF THE MAILING DATE OF THIS FINAL ACTION AND THE ADVISORY ACTION IS NOT MAILED UNTIL AFTER THE END OF THE THREE-MONTH SHORTENED STATUTORY PERIOD, THEN THE SHORTENED STATUTORY PERIOD WILL EXPIRE ON THE DATE THE ADVISORY ACTION IS MAILED, AND ANY EXTENSION


Serial Number 011,885


-6-

Art Unit 331

FEE PURSUANT TO 37 CFR 1.136(a) WILL BE CALCULATED FROM THE MAILING DATE OF THE ADVISORY ACTION. IN NO EVENT WILL THE STATUTORY PERIOD FOR RESPONSE EXPIRE LATER THAN SIX MONTHS FROM THE DATE OF THIS FINAL ACTION.

Any inquiry concerning this communication should be directed to Examiner Charles H. Harris at telephone number 703-557-3125.

  
ROBERT A. HAVER  
S.P.E.  
ART UNIT 331

 Charles H. Harris:dm  
(703) 557-3125  
March 15, 1988